



September 25, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-4290

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152345.

The City of El Paso Police Department (the "department") received a request for a copy of all documents pertaining to a specified internal affairs investigation. You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts information from disclosure considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses the common law right to privacy. Information is protected under the common law right to privacy if it is information that (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

You state that the submitted information relates to a complaint filed by a police officer that alleges that another police officer subjected him to "harassment, discrimination, retaliation and [a] hostile work environment." You also assert that, in accordance with *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. – El Paso 1992, writ denied), the submitted documents should be withheld from disclosure in their entirety. We note, however, that *Ellen* addressed the applicability of common law privacy to information concerning investigations of sexual harassment allegations. Based on our review of the submitted information, we find no evidence either that the complainant police officer in this case alleged that he had been sexually harassed or that the city conducted a sexual harassment investigation pursuant to the complainant's allegations. Accordingly, we find that the submitted information may not be withheld from disclosure on the basis of *Ellen*.

However, you also claim that a review of the submitted information suggests that the complaining officer is actually complaining of being subjected to "mental abuse" and "stress" in the workplace. Based on our review of the submitted information, we find no evidence that the complainant police officer's allegations of what occurred between himself and the other police officer rose to the level of mental or physical abuse in the workplace that has been recognized by *Industrial Foundation*. See, e.g., Open Records Decision No. 470 (1987) (finding fact that employee broke out in hives as result of job-related stress highly intimate and embarrassing). But cf. Open Records Decision Nos. 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow). Therefore, we conclude that you may not withhold any of the submitted information pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.

However, we note that the submitted information contains information that is excepted from disclosure pursuant to section 552.117(2) of the Government Code. Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Thus, the department must withhold all department officers' home addresses, home telephone numbers, social security numbers, and family member information from disclosure under section 552.117(2). We note, however, that you state that the department officer who filed the complaint in this matter is no longer employed by the department. If this officer remains a licensed police officer as defined by article 2.12 of the Code of Criminal Procedure, his home address and telephone number, social security number, and family member information must not be released under section 552.117(2). If he is no longer a licensed officer, his personal information may still be excepted from disclosure under section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential

under section 552.024. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department must release the complainant officer's personal information if he is no longer a licensed officer and he did not make a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was received. We have marked the information that is subject to section 552.117(1).

In summary, we have marked the submitted information that may be excepted from disclosure pursuant to section 552.117 of the Government Code. You must release all other submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

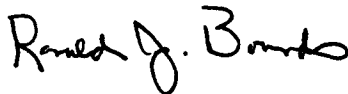
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 152345

Enc. Marked documents

cc: Mr. Thomas Barbee
EPMPOA
747 East San Antonio Avenue, Suite 103
El Paso, Texas 79901
(w/o enclosures)